

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

BIOPLUS SPECIALTY PHARMACY)
SERVICES, INC.,)
)
Plaintiff,) Civil Action No. 1:18-cv-03370-WFK-ST
)
)
v.)
)
) <u>JURY TRIAL DEMANDED</u>
B.O.P. PHARMACY, INC.,)
)
Defendant.)

SUPPLEMENTAL DECLARATION OF ELVIN MONTANEZ

Pursuant to 28 U.S.C. § 1746, I, ELVIN MONTANEZ, declare under penalty of perjury as follows:

1. I am over the age of eighteen and otherwise competent to make this declaration.

Unless specifically indicated to the contrary, all statements in this declaration are based upon my personal knowledge.

2. I am the Chief Operating Officer of BioPlus Specialty Pharmacy Services, Inc. (“BioPlus”), the Plaintiff in the above-styled action.

3. This declaration is being offered in support of BioPlus’ Reply in support of its Motion for Preliminary Injunction to restrain Defendant B.O.P. Pharmacy, Inc. (“Defendant” or “B.O.P”) from continuing its unauthorized infringement of BioPlus’ registered “BIOPLUS” trademark.

4. BioPlus has been using the BIOPLUS Mark in interstate commerce for more than twenty (20) years and has strategically invested substantially in advertising under the BIOPLUS Mark.

5. Attached to the Reply in support of its Motion for Preliminary Injunction as **Exhibit A** is a true and correct copy of a letter that Jim Lussier, Esq. sent to Defendant's owners Clement Ho and Wai Yan Tse on November 14, 2011, on behalf of BioPlus.

6. Attached to the Reply in support of its Motion for Preliminary Injunction as **Exhibit B** is a true and correct copy of a misdirected electronic prescription received by BioPlus and forwarded to me on June 27, 2018. All protected health information ("PHI") has been redacted. The delay caused by the misdirection of this prescription to Defendant, instead of immediately to Plaintiff, resulted in Plaintiff's failure to fulfill its service guarantee for this prescription.

7. Attached to the Reply in support of its Motion for Preliminary Injunction as **Exhibit C** is a true and correct copy of a misdirected electronic prescription received by BioPlus and forwarded to me on July 6, 2018. All protected health information ("PHI") has been redacted. The delay caused by the misdirection of this prescription to Defendant, instead of immediately to Plaintiff, resulted in Plaintiff's failure to fulfill its service guarantee for this prescription.

8. Attached to the Reply in support of its Motion for Preliminary Injunction as **Exhibit D** is a true and correct copy of a misdirected electronic prescription received by BioPlus and forwarded to me on July 10, 2018. All protected health information ("PHI") has been redacted. The delay caused by the misdirection of this prescription to Defendant, instead of immediately to Plaintiff, resulted in Plaintiff's failure to fulfill its service guarantee for this prescription.

9. Attached to the Reply in support of its Motion for Preliminary Injunction as **Exhibit E** is a true and correct copy of a misdirected electronic prescription received by BioPlus

and forwarded to me on July 16, 2018. All protected health information ("PHI") has been redacted. The delay caused by the misdirection of this prescription to Defendant, instead of immediately to Plaintiff, resulted in Plaintiff's failure to fulfill its service guarantee for this prescription.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on this 27 day of July, 2018.



Elvin Montanez